

County of Los Angeles CHIEF EXECUTIVE OFFICE

Kenneth Hahn Hall of Administration 500 West Temple Street, Room 713, Los Angeles, California 90012 (213) 974-1101 http://ceo.lacounty.gov

> GLORIA MOLINA First District

MARK RIDLEY-THOMAS Second District

ZEV YAROSLAVSKY Third District

Board of Supervisors

DON KNABE Fourth District

MICHAEL D. ANTONOVICH Fifth District

January 19, 2010

The Honorable Board of Supervisors County of Los Angeles 383 Kenneth Hahn Hall of Administration 500 West Temple Street Los Angeles, CA 90012

Dear Supervisors:

DEPARTMENT OF PUBLIC WORKS: FIRE DEPARTMENT
NEW FIRE STATION 156
UNINCORPORATED AREA OF SANTA CLARITA
AWARD CONSTRUCTION CONTRACT; APPROVE REVISED BUDGET
SPECS. 6838R1; CAPITAL PROJECT NO. 70973
(FIFTH DISTRICT) (3 VOTES)

SUBJECT

This action will award and authorize the Department of Public Works (Public Works) to execute a construction contract for the New Fire Station 156 project.

JOINT RECOMMENDATION WITH THE FIRE CHIEF THAT YOUR BOARD, ACTING AS THE GOVERNING BODY OF THE CONSOLIDATED FIRE PROTECTION DISTRICT OF LOS ANGELES COUNTY:

- 1. Find that the bid of SBS Corporation, the apparent lowest bidder for the New Fire Station 156 project, is nonresponsive for the reasons stated herein and, therefore, reject the bid of SBS Corporation on that basis.
- 2. Find that AMG Associates, Inc., the second lowest bidder, is the apparent Lowest Responsive and Responsible Bidder for construction of Fire Station 156, and award a construction contract for the New Fire Station 156 project for \$3,872,000, subject to AMG Associates, Inc., timely submitting to the County a satisfactory baseline construction schedule, acceptable Faithful Performance and Payment for Labor and Material Bonds, and evidence of required contractor insurance.

"To Enrich Lives Through Effective And Caring Service"

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- 3. Delegate to the Director of Public Works the authority to determine, in accordance with the applicable contract and bid specifications, whether the contractor has satisfied the conditions for contract award, and authorize the Director of Public Works or her designee to execute the construction contract, in the form previously approved as to form by County Counsel, with AMG Associates, Inc., and to establish the effective date of the construction contract if the Director of Public Works determines that the above conditions have been satisfied.
- 4. Approve the \$8,640,000 revised total project budget for the New Fire Station 156 project, Capital Project No. 70973.
- 5. Delegate authority to the Fire Chief or his designee to execute all necessary documents and agreements, including easements, required to complete the New Fire Station 156 project.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

Approval of the recommended actions will allow Public Works to proceed with construction.

The proposed project is a new 11,050-square-foot fire station that will be constructed on 1.27 acres adjacent to the existing temporary fire station located at 24505 Copper Hill Drive, Santa Clarita, California. The new fire station project consists of a two-bay apparatus room, main office, day room, kitchen, an exercise room, dormitory quarters for seven personnel, and a detached dozer team facility containing dormitory quarters for three personnel, kitchen, day room, and bathroom.

On November 18, 2008, your Board adopted plans and specifications for the New Fire Station 156 project and instructed the Executive Officer of your Board to advertise for bids. After the bidding process, due to ambiguity in the bid documents relating to the information that is required for the listing of subcontractors, we returned to your Board on April 21, 2009, with the recommendation to reject all bids, adopt revised plans and specifications, and readvertise for bids.

In connection with the rebid, on May 7, 2009, 16 bids were received and SBS Corporation (SBS) was identified as the apparent lowest bidder. AMG Associates, Inc. (AMG), was identified as the apparent second lowest bidder. However, due to a deficiency in SBS's bid, it is recommended that the construction contract be awarded to AMG. A summary of the bids is included in Attachment B.

Summary of AMG Associates, Inc.'s, Bid Protest

After Public Works identified SBS as the apparent lowest bidder, AMG, the second lowest bidder, submitted a bid protest to Public Works, claiming that SBS's bid was nonresponsive on several grounds. First, AMG alleged that SBS was not entitled to be credited with the \$50,000 Local Small Business Enterprise (LSBE) preference because SBS failed to submit a properly completed and executed LSBE preference form with its bid and that without the \$50,000 bid preference SBS would not be the lowest bidder. Second, AMG alleged that SBS's bid bond was invalid because it failed to include a power of attorney form from its bid bond surety. Third, AMG alleged that SBS omitted required business location information for five of its listed subcontractors. Fourth, AMG alleged that SBS provided an erroneous business location for its intended fire sprinkler subcontractor.

On August 17, 2009, AMG and its counsel, Public Works staff, and County Counsel attended an informal hearing relative to AMG's bid protest. Two of the four bid protests were found to be immaterial and two were found to be material and warranted finding SBS Corporation to be nonresponsive, therefore, awarding the construction contract to AMG Associates. Following is a review of the four protest grounds raised by AMG and Public Works' findings regarding them:

Protest Ground 1 -- LSBE Preference

AMG alleged that when the County calculated the final bid results for the project, the County erroneously credited SBS with the \$50,000 LSBE preference. AMG alleged that SBS was not entitled to receive the \$50,000 LSBE preference because SBS failed to submit an LSBE preference form with its bid. In being credited with the LSBE preference, SBS was identified as the apparent lowest bidder with a total bid amount of \$3,858,658 (the total bid amount includes the base bid, plus application of the \$50,000 LSBE preference, plus 180 days of stipulated delay at a bid-upon daily overhead rate). SBS's total bid amount was \$85,342 lower than AMG's total bid amount of \$3,944,000, with AMG not receiving the \$50,000 LSBE preference. Even if SBS had not received the preference, SBS's total bid amount still would have been \$35,342 lower than AMG's total bid amount without the LSBE preference, and SBS still would have been deemed the apparent lowest bidder.

In investigating the facts surrounding the LSBE preference issue, Public Works determined that SBS did submit the LSBE preference form with its original bid, but the form was not completely filled out and was not signed under of penalty of perjury as required by the bid specifications. A short time after the bid opening, SBS submitted an

updated LSBE form that was completed, filled out, and was properly executed under penalty of perjury. Public Works also independently verified with the Office of Affirmative Action Compliance (OAAC) that, prior to bid submission, SBS was validly registered as an LSBE with the County. Public Works also verified with OAAC that AMG, while having claimed that LSBE preference and properly completed the form, they are in fact not a validly registered LSBE with the County.

With regard to the merits of the disputed LSBE preference issue, Public Works determined that by submitting an incomplete and unsigned LSBE preference form, SBS did not strictly comply with the bid specifications. On balance, however, Public Works believed it was reasonable to find that SBS substantially complied with the LSBE requirements and that this deficiency was not material and did not give SBS an unfair advantage over the other bidders. Accordingly, Public Works, in consultation with County Counsel, concluded that the determination of whether to waive the LSBE preference deficiency was within the discretion of your Board, that is, your Board could elect to waive the deficiency as nonmaterial and, thereby, credit SBS with the LSBE preference, or alternatively, your Board could elect not to waive the deficiency in which case SBS would not receive the \$50,000 LSBE preference and would still be deemed the apparent lowest bidder.

Protest Ground 2 -- Bid Bond Power of Attorney Form

AMG alleged that SBS failed to include a required power of attorney form with its bid bond. Public Works determined that this assertion was factually inaccurate and that SBS did properly submit a power of attorney form with its bid bond.

Protest Ground 3 -- Omission of Business Location for Five Listed Subcontractors

AMG alleged that SBS failed to identify on its subcontractor listing form the business location for five of its listed subcontractors and that SBS was nonresponsive on that basis. Public Works determined that SBS did omit such information on its subcontractor listing form, leaving blanks where the business location information was supposed to be provided. The project specifications require that a listed subcontractor's business location must be provided as mandated by Public Contract Code, Section 4104.

Section 4106 of the Public Contract Code provides that failure by a prime contractor to specify a subcontractor for a portion of the work constitutes agreement by the prime contractor that it is fully qualified to perform that portion of the work and that it will perform such portion of the work. Accordingly, in accordance with Public Contract Code, Section 4106, Public Works instructed SBS that it would have to self-perform the portions of work it had intended for the five improperly specified subcontractors. SBS

confirmed in writing that it would self-perform such portions of the work. Accordingly, SBS's bid was not found to be nonresponsive on this basis.

Protest Ground 4 – Listing Deficiency Regarding Fire Sprinkler Subcontractor

Finally, AMG alleged that SBS identified an inaccurate business location on its subcontractor listing form for its fire sprinkler subcontractor, Wesco Fire Protection Company. Public Works determined that this allegation was factually correct in that SBS erroneously identified the New Fire Station 156 project site as the business address for the fire sprinkler subcontractor. Ultimately, Public Works reached the conclusion that SBS had failed to properly specify a fire sprinkler subcontractor as required by the bid specifications and Public Contract Code, Section 4104. Accordingly, in accordance with Public Contract Code, Section 4106, Public Works instructed SBS that it would have to self-perform the fire sprinkler portion of the work and that it would have to verify that it possessed the necessary specialty license at time of bid to do so.

The project specifications and State law (see Business and Professions Code, Section 7057(c)) provide that the fire sprinkler installation must be performed by a contractor possessing a valid State of California C-16 fire sprinkler contractor's license. The project specifications further indicate that the necessary licenses are required "at the time of bid in order to be considered a responsive bid." Similarly, Business and Professions Code, Section 7028.15(e), provides that a bid submitted to a public agency by a contractor who is not properly licensed shall be considered nonresponsive. SBS acknowledged that it did not possess the required specialty license to install the fire sprinklers at the time of bid submission. As discussed below, however, SBS disputed that this was a valid basis for its bid to be rejected as nonresponsive.

Public Works' Determination that SBS is Nonresponsive

On final analysis, Public Works determined that under the requirements of the bid specifications and Business and Professions Code, Section 7028.15(e), SBS's bid should be rejected as nonresponsive insofar as it failed to properly specify a subcontractor for the fire sprinkler portion of the work and was not licensed to self-perform such portion of the work.

SBS Protest of Nonresponsiveness Determination

SBS has protested Public Works' determination that its bid is nonresponsive, claiming that its failure to provide the correct business location for Wesco Fire Protection Co., its listed fire sprinkler subcontractor, was a technical error and a minor irregularity that should be waived by the County.

On October 19, 2009, SBS and its counsel, Public Works staff, and County Counsel attended an informal hearing at Public Works relative to SBS's protest of Public Works' nonresponsiveness determination. Following the meeting, SBS was advised that its bid protest was denied by Public Works, and it was informed of the date and time of the Board agenda concerning this item.

Subsequent to the meeting mentioned above, SBS and its counsel submitted a letter on November 5, 2009, protesting the AMG bid on the grounds that they had improperly listed their subcontractors, under the Subcontractor Listing Law, Public Contract Code, Section 4104, stating nine instances. Public Works staff and County Counsel reviewed the claim in detail and responded back to SBS and its counsel on November 17, 2009. SBS was advised that its bid protest was denied by Public Works and it was offered an informal hearing on the matter on December 1, 2009, with SBS and its counsel, AMG and their counsel, Public Works staff, and County Counsel.

At the hearing, the only AMG listing error discussed by SBS, out of the nine specified by SBS in its letter, concerned AMG's listing of the installer of the system for removing vehicle exhaust. SBS contended that the subcontractor for that work was improperly listed. AMG contended in written response to County's enquiries and at the hearing that a qualified installer would be used but that this installer did not have to be listed in the bid because the installation work was well below the 1/2 of 1 percent of the total contract amount, which is the threshold for listing of subcontractors under the Subcontractor Listing Law.

No new evidence was presented at the hearing to change the previous findings.

For the reasons discussed above, it is our recommendation to award the construction contract to AMG, subject to AMG having timely prepared a satisfactory baseline construction schedule and satisfied all conditions for contract award, including the criteria adopted by your Board and receipt of acceptable Faithful Performance and Payment for Labor and Material Bonds and evidence of contractor-required insurance.

Green Building/Sustainable Design Program

The project supports your Board's Sustainable Design Program by implementing design features that, when successfully installed, will allow for application of a U.S. Green Building Council's (Leadership in Energy and Environmental Design) Silver certification. The project will use water-efficient fixtures and will implement the use of drought tolerant landscaping to reduce the amount of potable water consumed.

Implementation of Strategic Plan Goals

The Countywide Strategic Plan directs the provision of Operational Effectiveness (Goal 1) by improving the efficiency, quality, and responsiveness of County services to all residents. It also directs that we ensure Children, Family and Adult Well-Being (Goal 2) by enhancing the ability of families to live in safe, stable, and supportive communities. We are also directed to improve Community and Municipal Services (Goal 3) by offering a wide range of services responsive to each community's specific needs. This project will help to achieve these goals, as it is an investment in public infrastructure that will benefit the Santa Clarita community by improving the Fire District's ability to respond to local emergencies.

FISCAL IMPACT/FINANCING

On November 18, 2008, your Board approved a \$12,745,000 project budget. The total project cost estimate included the preparation of plans and specifications, plan check fees, construction, bid contingency, demolition of existing temporary fire station, change orders, consultant services, miscellaneous expenditures, Civic Art allocation, and County services. Due to favorable construction bidding conditions, the estimated total project budget has been reduced to \$8,640,000. The Project Schedule and Budget Summary are included in Attachment A.

Sufficient funding is available in the Fiscal Year 2009-10 Capital Projects/Refurbishments Budget to complete construction of the proposed project. The project is funded with commercial paper proceeds and developer fees. There is no impact to net County costs.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

Applicable law, including the State Public Contract Code, requires the County to award construction contracts to the apparent Lowest Responsive and Responsible Bidder, which refers to the firm that: (1) submits the bid with the lowest cost; (2) is deemed by the County to be "responsive" to specific criteria under the solicitation, including but not limited to, licensure, bonding, and insurance requirements; and (3) is determined by the County to be a "responsible" bidder by exhibiting the quality, fitness, capacity, experience, and trustworthiness to satisfactorily perform the work required under the bid solicitation.

A standard contract, in the form previously approved by County Counsel, will be used. The standard Board-directed clauses that provide for contract termination,

renegotiation, and hiring qualified displaced County employees will be included in the contract.

The project specifications contain provisions requiring the contractor to report solicitations of improper consideration by County employees and allowing the County to terminate the contract if it is found that the contractor offered or gave improper consideration to County employees.

As requested by your Board on August 12, 1997, and as a threshold requirement for consideration for contract award, AMG is willing to consider Greater Avenues for Independence Program/General Relief Opportunities for Work participants for future employment.

As required by your Board, language has been incorporated into the project specifications stating that the contractor shall notify its employees, and shall require each subcontractor to notify its employees, about Board Policy 5.135 (Safely Surrendered Baby Law) and that they may be eligible for the Federal Earned Income Credit under the Federal income tax laws.

As required by your Board, the project cost includes 1 percent of design and construction costs to be allocated to the Civic Art Fund per your Board's Civic Art Policy adopted on December 7, 2004.

AMG is in full compliance with Los Angeles County Code, Chapter 2.200 (Child Support Compliance Program), Chapter 2.203 (Contractor Employee Jury Service Program), and Chapter 2.206 (Defaulted Property Tax Reduction Program).

To ensure that the contract is awarded to a responsible contractor with a satisfactory history of performance, bidders are required to report violations of the False Claims Act, their civil litigation history, and information regarding prior criminal convictions. The information reported was considered before making a recommendation to award.

ENVIRONMENTAL DOCUMENTATION

On March 20, 2007, your Board adopted the Negative Declaration prepared for the New Fire Station 156 project, including the demolition of the existing temporary fire station, and found that the project will have no significant effect on the environment. The recommended action is within the scope of the project in the previously approved Negative Declaration.

CONTRACTING PROCESS

On November 18, 2008, your Board adopted plans and specifications for the new Fire Station 156 project and instructed the Executive Officer of your Board to advertise for bids. On January 13, 2009, 20 bids were received. However, due to an ambiguity in the bid documents relating to the information that is required for the listing of subcontractors, we recommended that your Board reject all bids, adopt revised plans and specifications, and readvertise the project.

On May 7, 2009, 16 bids were received and, as discussed in detail above, SBS's bid was determined to be nonresponsive, and accordingly, AMG has been found to be the apparent Lowest Responsive and Responsible Bidder. A summary of the rebid is included in Attachment B.

AMG's Community Business Enterprises participation data and three-year contracting history with the County are on file with Public Works.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

There will be no negative impact on current County services or projects during the performance of the recommended services.

CONCLUSION

Please return one adopted copy of this letter to the Chief Executive Office, Capital Projects Division; Arts Commission; and the Department of Public Works, Project Management Division II.

Respectfully submitted,

WILLIAM T FUJIOKA Chief Executive Officer

Fire Chief

WTF:GF:SK DJT:SW:zu

Attachments

c: Arts Commission

Auditor-Controller

County Counsel

Executive Officer, Board of Supervisors

Fire Department

Department of Public Social Services (GAIN/GROW Program)

Department of Public Works

Office of Affirmative Action Compliance

ATTACHMENT A

DEPARTMENT OF PUBLIC WORKS: FIRE DEPARTMENT NEW FIRE STATION 156 UNINCORPORATED AREA OF SANTA CLARITA AWARD CONSTRUCTION CONTRACT; APPROVE REVISED BUDGET SPECS. 6838R1; CAPITAL PROJECT NO. 70973 (FIFTH DISTRICT) (3 VOTES)

I. PROJECT SCHEDULE

Project Activity	Scheduled Completion Date	Revised Completion Date
Project Program	Completed	Completed
Design Construction Document Submittal Jurisdictional Approval	Completed Completed	Completed Completed
Construction Bid and Award	05/07/09	01/19/10
Construction Substantial Completion Station Operational Project Acceptance	09/30/10 10/30/10 12/30/10	04/27/11 05/25/11 11/10/11

II. PROJECT BUDGET SUMMARY

Budget Category	Projec	ct Budget		t of this tion		l Project Iget
Land Acquisition	\$	0	\$	0	\$	0
Construction Low Bid Construction Contract Bid Contingency (10 percent) Change Orders – Construction Demolition (JOC) Offsite Construction Equipment Construction Consultants Miscellaneous Expense Telecomm Equip – Affixed to Building	\$ \$ \$ \$ \$ \$ \$ \$ \$ \$	7,305,000 730,500 804,000 680,000 150,000 0 0	\$\$\$\$\$\$\$\$\$\$\$\$\$	3,433,000) 730,500) 29,600) 0 0 0	**********	3,872,000 0 774,400 680,000 150,000 0 0
Civic Arts Subtotal	\$ \$ \$	85,500 9,905,000	<u>(\$</u> (\$	40,930) 4,234,030)	\$ \$ \$	44,570 5,670,970
Programming/Development	\$	0	\$	0	\$	0
Plans and Specifications	\$	585,000	\$	0	\$	585,000
Consultant Services Deputy Inspection Site Planning Hazardous Materials Geotech/Soils Test Material Testing	\$ \$ \$ \$	135,000 0 0 65,000 0	\$ \$ \$ \$ \$ \$ \$ \$ \$	0 0 0 0	\$ \$ \$ \$ \$ \$ \$	135,000 0 0 65,000 0
Cost Estimating Topographic Surveys Construction Management Construction Administration Environmental Move Management Equipment Planning	\$ \$ \$ \$ \$ \$ \$	20,000 0 0 0 0 0	******	0 0 0 0 0	****	20,000 0 0 0 0 0
Legal Scheduling Contract/Change Order Other Subtotal	\$ \$ \$ \$ \$ \$ \$	20,000 0 5,000 245,000	*	0 0 0 0 0	*	20,000 0 5,000 245,000

II. PROJECT BUDGET SUMMARY (continued...)

Budget Category	Projec	t Budget	Impact Act		Revised Bud	-
Miscellaneous Expenditures						
Printing	\$	15,000	\$	0	\$	15,000
Furniture, Fixtures, and Equipment	<u>\$</u> \$	100,000	<u>\$</u> \$	0	<u>\$</u>	100,000
Subtotal	\$	115,000	\$	0	\$	115,000
Jurisdictional Review/Plan Check/Permit						
Code Compliance Inspection	\$	55,000	\$	0	\$	55,000
County Services	1					
Code Compliance and Quality						
Control Inspections	\$	333,000	\$	0	\$	333,000
Design Review	\$	44,000	\$ \$ \$ \$ \$ \$ \$ \$	0	\$	44,000
Design Services	\$	0	\$	0	\$	0
Contract Administration	\$	48,000	\$	26,030	\$	74,030
AED Support Services		1,500	\$	0	\$ \$	1,500
Project Management	\$ \$	821,700		103,300	\$	925,000
Project Management Support Services	\$	0	\$	0	\$	0
Secretarial	\$	48,500	\$	0	\$	48,500
Document Control	\$	250,500	\$	0	\$	250,500
ISD Job Order Contract Management	\$	0	\$	0	\$	0
DPW Job Order Contract Management		0	\$	0	\$	0
ISD ITS Communications	\$ \$	170,000	\$	0	\$	170,000
Project Security	\$	0	\$	0	\$ \$ \$ \$ \$ \$	0
Project Technical Support	\$	80,000	\$	0	\$	80,000
Consultant Contract Recovery	\$	27,500	\$	0	\$	27,500
Office of Affirmative Action	\$	15,000	\$	0	\$	15,000
County Counsel	\$	0	\$	0	\$	0
Other	\$	0	\$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$	0	\$	0
Sheriff Job Order Contract Management	\$	0	\$	0	\$	0
Design Services	\$	0	\$ \$	0	\$	0
Subtotal	<u>\$</u> \$	1,839,700	\$	129,330	\$	1,969,030
Total	\$ 1	2,744,700	(\$	4,104,700)	\$	8,640,000

		BID OPENING	NING			
THE STATE OF THE S	NEV	N FIRE ST	NEW FIRE STATION 156			
	Th	Thursday, May 07, 2009	y 07, 2009			
PUBLIC WORKS			ESTIMATE	\$7,305,500		
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		To Hose			Small	
NO CONTRACTOR CONTRACTOR	BASEBION	Zale:	180 days	AMOUNT	Preference 50.000	0
SBS Corporation	3,728,658	1,000.00	180000	3,908,658	三	3,858,658
AMG	3,872,000	400	72000	3,944,000		3,944,000
TOBO CONSTRUCTION	3,974,775	200	36000	4,010,775	YES	3,960,775
INTERTEX	3,884,000	800	144000	4,028,000		4,028,000
FEI ENTERPRISES, INC.	3,934,433	900	162000	4,096,433	YES	4,046,433
PERERA CONSTRUCTION	3,898,000	1,370	246600	4,144,600		4,144,600
GONZALEZ CONSTRUCTION	4,134,775	009	108000	4,242,775	YES	4,192,775
WOODCLIFF CORPORATION	4,252,000	0	0	4,252,000		4,252,000
VIOLA INC.	3,997,000	1,500	270000	4,267,000		4,267,000
NSA CONSTRUCTION GROUP	4,148,000	750	135000	4,283,000 YES	YES	4,233,000
G2000 CONSTRUCTION INC.	4,296,000	009	108000	4,404,000 YES	YES	4,354,000
DELMAC	4,388,000	750	135000	4,523,000 YES	YES	4,473,000
CTP	4,635,000	1,400	252000	4,887,000 YES	YES	4,837,000
NOVUS CONSTRUCTION	4,905,790	009	108000	5,013,790 YES	YES	4,963,790
MOMENT CONSTRUCTION	5,127,000	700	126000	5,253,000 YES	S∃A	5,203,000
MORILLO CONSTRUCTION	4,986,000	2,000	360000	5,346,000		5,346,000